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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,253	11/14/2003	Chao Hsiung Yen	4151JT	4987

7590 10/14/2005

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EXAMINER
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STASHICK, ANTHONY D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 10/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/715,253	<b>Applicant(s)</b> YEN, CHAO HSIUNG	
	<b>Examiner</b> Anthony Stashick	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, and 5-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Moua et al.

6,393,731. Moua et al. '731 discloses all the limitations of the claims including the following: a shoe sole having a heel portion and a front portion (see Figure 1); a resilient cushioning device (54 in Figure 10) engaged in the heel portion of the shoe sole for cushioning heel portions of users; the resilient cushioning device including a lower frame member (44 in Figure 3) and an upper frame member 54 supported above the lower frame member; the device suspended in the shoe sole (see Figures 1-2 and 10); the lower and upper frame members include an intermediate portion 42 or stay coupled together; a resilient member 62 engaged between rear portions of the lower and upper frame members; a resilient member 62 engaged between front portions of the lower and upper frame members; the lower frame member include a rear portion having a U-shaped structure (see wall 40, U-shaped to curve with the heel of the user); the lower frame member includes a front portion (that near arch) having a flat planar structure (bottom surface is flat and planar. Also, as seen in figure 10, front portion of upper member is flat and planar); the upper frame member includes a rear portion having an O-shaped structure (see reference number 64, O-shaped when viewed from the top or bottom); the upper frame member includes a front

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portion having a flat planar structure (see Figure 10); the upper frame member includes a front portion having an opening formed therein (see Figure 10, front portion is open).

2. Claims 1, 5 and 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Lombardino 6,055,747. Lombardino '747 discloses all the limitations of the claims including the following: a shoe sole 14 having a heel portion and a front portion (see Figure 1); a resilient cushioning device 20 engaged in the heel portion of the shoe sole (see Figure 1) for cushioning heel portions of users; the resilient cushioning device including a lower frame member 22 and an upper frame member 26 supported above the lower frame member; the device suspended in the shoe sole (see Figures 1, 4-5 and 7); the lower and upper frame members include an intermediate portion, or stay (sidewalls shown in Figure 2) coupled together; a resilient member 28, 50 engaged between rear portions of the lower and upper frame members; a resilient member 28, 50 engaged between front portions of the lower and upper frame members; the lower frame member includes a rear portion having a U-shaped structure (see Figure 6, back sidewall portion of 22); the upper frame member includes a rear portion having an O-shaped structure (see Figure 6, reference number 40); the upper frame member includes a front portion having a flat planar structure (see Figure 6).

### ***Response to Arguments***

3. Applicant's arguments filed July 27, 2005 have been fully considered but they are not persuasive. Applicant argues that the resilient cushioning device of Muoa et al. '731 may not be formed or acted as a seesaw device. It appears applicant is arguing more than that which is claimed. Nowhere in the claims is there any mention of a seesaw device of the resilient

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cushioning acting as a seesaw device. Furthermore, applicant argues that Muoa et al. '731 has upper and lower frame members having an end 42, not an intermediate portion, coupled together. The intermediate portion coupled together is portion 42, as it falls between (or intermediate) the frame members 44 and 54. It appears that what applicant is attempting to claim as the intermediate portion is an intermediate portion of the frame member, located on the frame member between the frame members ends. This limitation has not been made clear in the claims as filed and therefore, the intermediate portion 42 of Muoa et al. '731 meets this limitation as claimed, including it being a stay. Applicant further argues that Lombardino has two sides and not an intermediate portion. As noted above with respect to Muoa et al., the sides of Lombardino are intermediate the upper and lower frame members and therefore meet this limitation as claimed. Applicant further argues that "the resilient members 28, 50 also may not be separated from each other by an intermediate coupling portion between the lower frame member 22 and the upper frame member 26...". It appears applicant is arguing more than that which is claimed, as this limitation cannot be found in the claims as written. Lastly, applicant states that the claims require "...to allow the intermediate portion (33, 43) and the stay (47) to be disposed and located between the resilient members (50, 60), and to form and act as a seesaw device.". These limitations cannot be found in the claims as presented and it appears applicant is arguing more than that which is claimed.

### ***Conclusion***

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4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

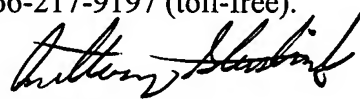
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is 571-272-4561. The examiner can normally be reached on Monday-Thursday 8:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anthony Stashick  
Primary Examiner  
Art Unit 3728

ADS